HINMAN STRAUB PC
ATTORNEYS AT LAW

121 State Street
Albany, New York 12207-1693
Tel: 518-436-0751
Fax: 518-436-4751

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RE: AN ACT to amend the insurance law, the social services law, the education law and the public health law, in relation to requiring health insurance policies to include coverage of all FDA-approved contraceptive drugs, devices, and products, as well as voluntary sterilization procedures, contraceptive education and counseling, and related follow up services and prohibiting a health insurance policy from imposing any cost-sharing requirements or other restrictions or delays with respect to this coverage

A.9957 (Cahill)

MEMORANDUM IN OPPOSITION

Submitted on behalf of the Blue Cross and Blue Shield Plans

The Blue Cross and Blue Shield Plans of New York strongly oppose enactment of this bill, which would unnecessarily enact "clarifying" requirements for contraception coverage under the Affordable Care Act (ACA) while also "enhancing" the state's contraceptive coverage beyond the requirements of the ACA by prohibiting cost-sharing and medical management of contraceptive procedures, and mandating contraception coverage for men. The provisions of this Bill that are necessary to ensure a women's access to contraception coverage have already been addressed by the Federal Government and are enforceable against health insurers, making state legislation on the issue unnecessary. Furthermore, the "enhancements" to contraception coverage that are included in this Bill will significantly increase health insurance premiums for all New York residents.

After passage of the ACA, there remained some confusion as to which types of contraception would be subject to the member cost sharing exemptions. On May 11, 2015, the Department of Health and Human Services (HHS) released clarifying guidance on the coverage of preventative services under the Affordable Care Act (ACA) applicable to all insurance policies offered in New York, except for grandfathered plans. The HHS guidance clarified that all insurers must cover, without cost-sharing, at least one form of contraception in each of the methods (currently 18) that the FDA has identified for women in its current Birth Control Guide, including the ring,

the patch and intrauterine devices.[1] This coverage must also include the clinical services, including patient education and counseling needed for provision of the contraceptive method. Importantly, the federal guidance stresses that insurers may utilize reasonable medical management techniques for the provision of contraception coverage. This guidance addressed the primary concern which precipitated this legislation.

The legislation, however, goes beyond the requirements in the ACA, by imposing the following restrictions and mandates: (1) prohibit insurers from "medical management" review restrictions that can limit or delay contraceptive coverage; (2) mandate coverage of male contraceptive methods to bring their insurance coverage in line with the benefits enjoyed by females; and (3) allow for the provision of a year's worth of a contraception at one time. While this Bill is being promoted as necessary to maintain existing protections should the ACA be repealed at the federal level, the "enhancements" to existing requirements are of such significance that the Bill will result in a dramatic expansion of coverage that will necessitate premium increases for health insurance policies.

I. LIMITATIONS ON MEDICAL REVIEW WOULD INCREASE COSTS WHILE REDUCING CLINICAL AND SAFETY OVERSIGHT.

This Bill would prohibit insurers from using medical management techniques for contraception coverage, such as cost-sharing to incentivize generics or medical necessity review, which is expressly permitted under current federal guidance. Specifically, it would prohibit insurers from charging a co-payment for a brand-name contraceptive when there is an available generic equivalent that is covered without cost-sharing if the equivalent is "medically inadvisable." Thus, the Bill limits the ability of insurers to effectively incentivize the use of generic equivalents by mandating coverage when a prescriber deems a particular product appropriate, without requiring any criteria to justify the use of a particular non-preferred product over another preferred product, such as the patient has tried and failed on a preferred product or the patient is already stabilized on the non-preferred product.

Current federal guidance on this issue already provides strong protections for consumers. It requires that insurers utilizing reasonable medical management techniques within a specified method of contraception to have an easily accessible, transparent, and sufficiently expedient exceptions process that is not unduly burdensome on the individual or a provider. If an individual's attending provider recommends a particular service or FDA-approved item based on a determination of medical necessity with respect to that individual, the plan or issuer must cover that service or item without cost sharing.

Further, this policy ignores the fact that there are legitimate reasons why all medical services are subject to "medical management" review using evidence based treatment criteria. These evidenced based treatment criteria are developed and used by nationally renowned provider organizations and plans alike to support better patient outcomes and ensure health care decisions are consistent and clinically appropriate. These guidelines reduce over and underutilization and foster appropriate care with specific evidence-based decision-making. These criteria are also

[1] HHS, *FAQs about Affordable Care Act Implementation,* May 11, 2015 available at: https://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/aca_implementation_faqs26.pdf

consistently reviewed and revised by *clinicians* and health care experts to ensure they remain current and appropriate, and should therefore not be disregarded simply because one individual clinician determines they think they know better than the national guidelines.

II. THE BILL SIGNIFICANTLY INCREASES INSURANCE COVERAGE REQUIREMENTS

While the Bill is promoted as necessary to maintain existing protections should the ACA be repealed at the federal level, the "enhancements" to existing requirements are of such significance that the Bill will result in a dramatic expansion of coverage that will necessitate premium increases for health insurance policies. For example, the Bill would eliminate the requirement the contraceptive coverage be prescribed by a health care provider in order to be covered by an insurer, requiring coverage for over-the-counter methods as well as prescription contraception.

Furthermore, the Bill requires insurers to cover a 12-month supply of pills at one time. A 12-month supply is not allowed for any other condition, even lifetime chronic conditions, and women often stop using birth control because they decide to become pregnant or switch methods for a number of reasons. In 2017, the Department of Financial Services adopted a regulation that requires insurers to cover a limited supply (3-months) of contraceptives when first prescribed, before being required to cover a 12-month supply of contraceptives. This Bill ignores this carefully structured approach, which was designed to prevent waste if the member decides to switch methods or stop using contraception all together. However, this Bill would not place any limitation on the 12-month supply. This will result in a waste within the health care system simply to provide convenience to the member, which is often not even an issue because of the wide use of mail order drugs.

III. THIS BILL IS AN UNFUNDED MANDATE THAT WOULD NEED TO BE SUBSIDIZED BY TAXPAYERS

The Essential Health Benefits under the Affordable Care Act provide women's preventive health care services, such as mammograms, screenings for cervical cancer, prenatal care, and contraception coverage, generally with no cost sharing. This Bill, however, greatly expands contraception coverage beyond the Essential Health Benefits to include the following: (1) allow for the provision of a year's worth of a contraceptive at a time; and (2) cover men's contraceptive methods, including sterilization.

Any health benefits which the State wishes to mandate that are not Essential Health Benefits as prescribed by the ACA must be paid for in full by the State, if such benefits are to be mandated on the State's Health Exchange. The Bill would add a mandate that is not covered under the Essential Health Benefits. Thus, the resulting mandate would lead to increased premiums across all lines of health insurance, the cost of which would be particularly acute for all New Yorkers, as the Bill would require coverage services on the Exchange that the Federal government will not cover, meaning it would need to be entirely funded by taxpayer dollars.

For these reasons, we strongly oppose enactment of this Bill.

Respectfully submitted,

HINMAN STRAUB ADVISORS, LLC
Legislative Counsel for the Blue Cross and Blue Shield Plans

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